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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/071,052	06/04/1993	JEFFRY W. KREAMER	467312465	9541

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DAVIS, BROWN, KOEHN, SHORS & ROBERTS, P.C.
THE FINANCIAL CENTER
666 WALNUT STREET
SUITE 2500
DES MOINES, IA 50309-3993

EXAMINER

CRIARES, THEODORE J

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 11/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

08/071,052

Applicant(s)

KREAMER, JEFFRY W.

Examiner

Theodore J. Criares

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 27-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 27-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

CLAIMS 27-32 ARE PRESENTED FOR EXAMINATION

DETAILED ACTION

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.117(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.117(e) had been timely paid, the finality of the previous Office Action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 25, 2004 has been entered with the following effect:

Claims 27-32 are drawn to a composition of aspirin and a multivitamin which "comprises at least one vitamin from the group including niacin, vitamin C, vitamin E, and vitamin B₆."

The claims are given their broadest interpretation. They read on a patient taking an aspirin and multivitamin that contains vitamin C, or niacin or vitamin B₆ separately or in combination. The functional language within the claims does not further limit the claims.

Applicant's present priority date is June 4, 1993. The present application is a continuation of SN 07/746,615, filed August 19, 1991 and **abandoned December 15, 1992**, which is a continuation of SN 07/317,422, filed March 3, 1989, and **abandoned August 22, 1990**. This application is not a continuation applications but is Supplemental continuation application.

The earliest priority date available to the applicant is the filing date of the current application, June 4, 1993.

Therefore, Hannekens reference with a filing date of October 1, 1990 has priority over the filing date of the present application, since there is a hiatus from December 15, 1992 and June 4, 1993.

Claims 27-32 are again rejected under 35 U.S.C. 103(a) as being unpatentable over Hannekens (5,871,766).

Hennekens in the Abstract and at column 2, line 50 to column 3, line 45 discloses the beneficial effects of Vitamin E on endothelial cells and atherosclerotic vascular disease. At column 3, lines 66-67 this reference teaches the combination of vitamin E and aspirin. The Amounts of Vitamin E as claimed in claims 28-32 are taught at column 5, lines 20-26. The amount of aspirin to be used in the combination with Vitamin E is taught at column 6, lines 61-66 which teach the dose of aspirin, the normal tablet form contains 325 mg.

The reference clearly discloses the effect of Vitamin E on cardio-vascular diseases and that it can be combined with aspirin as set forth in the above reference.

Applicant's claims are drawn to a composition. It is well recognized in Patent Law that a new use of known composition does not render the composition patentable.

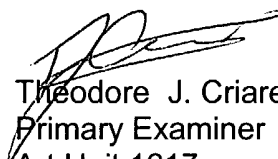
Therefore, the composition claims 27-32 are obviated under 35 U.S.C. 103 since an intended use limitation does not render the composition unobvious. See *In re Skoner*, 186 USPQ 80 (CCPA 1975); *In re Kalm* 154 USPQ 10 (CCPA 1967); *In re Halley* 132 USPQ 16 (CCPA 1961).

None of the elected claims 27-32 are allowed.

The test of obviousness is "whether the teachings of the prior art, taken as a whole, would have made obvious the claimed invention." In re Gorman, 933 F.2d 982, 18 USPQ 2d 1885, (Fed. Cir. 1991). In view of the above rejection it is deemed that the evidence presented has established a prima facie case of obviousness. is presented. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Theodore J. Criares whose telephone number is (571) 272-0625. The examiner can normally be reached on 6:30 A.M. to 5:00 P.M. Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan can be reached on (571) 272-0629. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Theodore J. Criares
Primary Examiner
Art Unit 1617

Application/Control Number: 08/071,052

Page 4

Art Unit: 1617

TJC

11/3/04